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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/636,072	08/06/2003	James Lousararian	P2205.01CIP2	9838

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MEDTRONIC VASCULAR, INC.
IP LEGAL DEPARTMENT
3576 UNOCAL PLACE
SANTA ROSA, CA 95403

EXAMINER

YABUT, DIANE D

ART UNIT	PAPER NUMBER
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3734

NOTIFICATION DATE	DELIVERY MODE
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03/28/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rs.vasciplegal@medtronic.com

Office Action Summary	Application No. 10/636,072	Applicant(s) LOUSARARIAN ET AL.	
	Examiner DIANE YABUT	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-17 and 48-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-17 and 48-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to applicant's amendment received on 12/19/2007.

The examiner acknowledges the amendments made to the claims.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 3-8, 48, and 50 are rejected under 35 U.S.C. 102(e) as being anticipated by **Cummins** (U.S. Patent No. **7,008,435**).

Claims 1, 3-4, 48, 50: Cummins discloses an individual staple **10** having a proximal end adapted for individual attachment to a single-staple delivery device, the staple having a plurality of distally extending prongs commonly connected to the proximal end at a crown and having tissue-piercing distal tips with sufficient stiffness to pierce tissue

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solely in response to a distal force applied at the proximal end, and a pledget **12** being pre-attached to the staple (before the staple engages tissue) and being embraced by the prongs, the pledget having preformed edges or peripheral notches **16** configured to be frictionally engaged by and between the prongs to capture and retain the pledget on the staple and to enable the combined staple and attached pledget to be advanced together by a single-staple delivery device, whereby when the prongs of the staple are engaged with tissue, the pledget will be disposed and retained (Figures 1-6). The pledget may have a plurality of peripherally extending tabs configured to be received between said plurality of prongs (tabs on either side of edges or slots **16** in Figure 1) or a plurality of holes, each receiving one of said plurality of prongs (col. 4, lines 51-55).

Claims 5-8: Cummins discloses the pledget comprising a bioabsorbable woven or non-woven fabric material, and a polyester or polymer sheet (col. 3, lines 41-44).

3. Claims 9-17 rejected under 35 U.S.C. 103(a) as being unpatentable over **Cummins** (U.S. Patent No. **7,008,435**) in view of **Dallessandro** (U.S. Patent No. **6,273,897**).

Claims 5-17: Cummins discloses the claimed device except for the pledget having a physiologically active agent adapted to be released over a predetermined time interval or comprising a coating or being impregnated in the pledget, or being an anti-microbial/antiseptic agent, or being an agent that inhibits intraluminal clotting or promotes extraluminal clotting.

Dalessandro teaches a bioabsorbable pledget (or “buttress”) **52** containing physiologically active agents that are released over a predetermined time interval, anti-microbial or anti-septic agents, agents that inhibit intraluminal clotting or promote extraluminal clotting, or agents that comprise a coating or are impregnated in said pledget (Figures 4-6, col. 5, lines 24 to col. 7, line 55). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a pledget comprising the above materials and agents, as taught by Dalessandro, to Cummins since they are well known in the art for their biocompatibility and other benefits that promote healing.

4. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Cummins** (U.S. Patent No. **7,008,435**) in view of **Ginn** (U.S. Patent No. **6,277,140**).

Claim 49: Cummins discloses the claimed device, except for the crown including distally extending tabs or webs adapted to bear against the pledget.

Ginn teaches a staple **62** having four prongs **76** and being commonly connected at a crown **70** including distally extending tabs or webs (near **74**) adapted to bear against a pledget (Figure 28). It would have been obvious to one of ordinary skill in the art at the time of invention to provide the distally extending tabs or webs, as taught by Ginn, to Cummins in order to create a secure engagement between the pledget and the staple.

Response to Arguments

5. Applicant's arguments with respect to claims 1, 3-17, and 48-50 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIANE YABUT whose telephone number is (571)272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Diane Yabut/
Examiner, Art Unit 3734

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/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3731